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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/600,732	07/20/2000	GEORGES SMITS	TIENSE RAFF.	8993
27667 7590 10/17/2007 HAYES SOLOWAY P.C. 3450 E. SUNRISE DRIVE, SUITE 140 TUCSON, AZ 85718			EXAMINER CHUNDURU, SURYAPRABHA	
			ART UNIT 1637	PAPER NUMBER
			MAIL DATE 10/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/600,732	<b>Applicant(s)</b> SMITS ET AL.	
	<b>Examiner</b> Suryaprabha Chunduru	<b>Art Unit</b> 1637	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 65-70 and 72-97 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 65-70 and 72-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. The Applicants' response to the office action filed on August 08, 2007 has been considered and acknowledged.

***Status of the Application***

2. Claims 65-70, 72-97 are pending in this application. All arguments and amendment have been fully considered and deemed unpersuasive for the reasons that follow. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. The action is made FINAL.

***Response to arguments:***

3. With regard to the rejection of claims 65-70, 72-78 and 89-97 under 35 USC 103(a) as being unpatentable over Yamazaki et al. in view of Van Den Ende and IRM; and the rejection of claims 79-88 under 35 USC 103(a) as being unpatentable over Yamazaki et al. in view of Van Den Ende and IRM further in view of Van Loo, Applicants' arguments and the exhibits regarding the weather reports are fully considered and found unpersuasive. Applicants assert that the Board in its earlier decision found that the original combination Yamazaki et al. in view of Van Den Ende with or without Van Loo fails to teach or suggest the claimed invention and remanded to the Examiner to establish that the IRM, a very critical evidentiary document, provides the missing evidence since the Examiner did not provide an English translation of the document. Applicants argue that the Examiner failed to provide or identify the missing teachings in IRM document. Applicants further assert that even if the English translation supports Examiner's position that the temperature in Ukkell never dropped below  $-0^{\circ}$  C except for two days in December, 1994, it is submitted that the temperature conditions for Ukkell are not

representative of the temperature conditions for Heverlee since the enclosed exhibit show that the altitude for Heverle and Ukkel differ and the live temperature for the same day differ by  $2^{\circ}\text{C}$  between the two cities and thus the English translation of IRM document fails to supply 'the very critical evidentiary' missing teachings to combine the references to render the instant invention obvious.

Applicants' arguments are found unpersuasive. First, IRM document does provide missing evidentiary temperature data for the year 1994, during which time Van Den Ende et al. performed their study. Second, the IRM document is a critical evidentiary document as characterized by the Board, because the temperature data of IRM shows temperature changes for the entire period during which time Van Den Ende et al. performed their study. Examiner has shown the missing temperature data as discussed in the rejection, which states that 'the meteorological data from the Royal Institute of Meteorological center, Belgium provides support for the temperatures during March 1, 1994 through December 31, 1994, which indicates that the temperatures never dropped below minus  $1^{\circ}\text{C}$ , except for two days in December, 1994 (see the chart for temperatures for 1994, wherein December 15 and 16 of 1994 had temperatures below minus  $1^{\circ}\text{C}$ , these two days are out of the growing and processing period of Van Den Ende et al., wherein their growing and processing period ended on December 6<sup>th</sup>, 1994)' and which is well recognized by the Applicants in their arguments pointing out in the paragraph 4 of the response. Thus Examiner has shown the missing temperature data in the IRM document. Third, the exhibits submitted by the Applicants to show the temperature difference between the two cities (Heverlee and Ukkel) for the year 2007, are fully considered, however Examiner notes that the temperature differences are not for the year 1994 during which the study was performed, thus the

exhibits are not representative of the differences between the twin cities during the year 1994. In addition to this, IRM data for the year 1994 does show the temperature variation for each day of the year and as discussed in the rejection the growing and processing period ended on December 06, 1994 thus the IRM data does show that the temperature never dropped below  $-0^{\circ}$  C except for two days (15<sup>th</sup> and 16<sup>th</sup>) in December, 1994. Thus the IRM document is indeed a critical evidentiary document to combine the references to render the instant invention obvious, especially the effect of limiting parameter (low or frost temperatures on FET activity) is known at the time the invention was made (as evidenced by Van Den Ende et al.) and it is prima facie obvious to avoid such conditions in the cultivation of chicory roots. Thus it is prima facie obvious to optimize the cultivating conditions not to fall in the low temperature conditions, and such modification of the method is considered obvious over the cited prior art. Accordingly the rejection is maintained.

### ***Conclusion***

No claims are allowable.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suryaprabha Chunduru whose telephone number is 571-272-0783. The examiner can normally be reached on 8.30A.M. - 4.30P.M , Mon - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Benzion can be reached on 571-272-0782. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Suryaprabha Chunduru  
Primary Examiner  
Art Unit 1637

*Suryaprabha Chunduru*  
SURYAPRABHA CHUNDURU 10/15/07  
PRIMARY EXAMINER